

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAMIAN CARLTON,

Petitioner,

V.

WARDEN,
London Correctional Institution,

Respondent.

Case No. 1:20-cv-1030

Judge Jeffery P. Hopkins

**ORDER ADOPTING REPORTS AND RECOMMENDATIONS (DOCS. 32 & 35)
AND OVERRULING OBJECTIONS (DOCS. 33 & 41)**

This habeas corpus case, brought *pro se* by the Petitioner Damian Carlton under 28 U.S.C. § 2254, is before the Court on the Magistrate Judge’s Report and Recommendations (Doc. 32) (the “Report”) and Supplemental Report and Recommendations after recommittal (Doc. 35) (the “Supplemental Report”). The Petitioner filed objections (Doc. 33) to the Report, which the Magistrate Judge recommends be overruled, as well as objections to the Supplemental Report (Doc. 36).

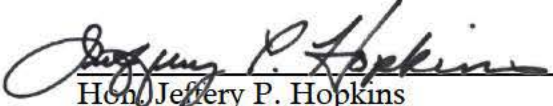
The Court has carefully reviewed the comprehensive findings and conclusions of the Magistrate Judge and has considered *de novo* all the filings in this case, with particular attention to the issues as to which Petitioner has lodged objections. *See* Docs. 33 & 36. Having done so, the Court determines that both the Magistrate Judge's Report and Supplemental Report should be adopted. None of the case authority cited by Petitioner speaks to the fact that his Petition was filed more than two years after the statute of limitations in 28 U.S.C. § 2244(d) had expired. And Petitioner has offered no new evidence of actual innocence such

as would excuse untimely filing under *McQuiggin v. Perkins*, 569 U.S. 383 (2013). Further, Petitioner's citations to *Evitts v. Lucey*, 469 U.S. 387 (1985), *see* Doc. 36, do nothing to change this Court's determination that the Magistrate Judge fully and correctly assessed—and rejected—Petitioner's argument that the allegedly ineffective assistance of counsel deprived the state trial court of jurisdiction to hear his case.

Accordingly, it is hereby **ORDERED** that Petitioner's objections (Docs. 33 & 36) are **OVERRULED**, that the Report (Doc. 32) and Supplemental Report (Doc. 35) are **ADOPTED** in their entirety, and that the Amended Petition is **DISMISSED** with prejudice. Petitioner is **DENIED** a certificate of appealability, and the Court hereby certifies to the United States Court of Appeals that an appeal would be objectively frivolous and therefore Petitioner should not be permitted to proceed *in forma pauperis*.

IT IS SO ORDERED.

Dated: June 1, 2023


Hon. Jeffrey P. Hopkins
United States District Judge